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RUEHCI/AMCONSUL CALCUTTA 0085
RUEHCG/AMCONSUL CHENNAI 9698
RUEHBI/AMCONSUL MUMBAI 8972
RHEBAAA/DEPT OF ENERGY WASHINGTON DC
RUCPDO/DEPT OF COMMERCE WASHDC
RUEIDN/DNI WASHINGTON DC
RHHMUNA/CDR USPACOM HONOLULU HI
RUEHGV/USMISSION GENEVA 0103
RHHJJPI/PACOM IDHS HONOLULU HI
RHMFISS/HQ USSOCOM MACDILL AFB FL
RHMFISS/HQ USCENTCOM MACDILL AFB FL
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RUEKJCS/JOINT STAFF WASHDC
RHEHNSC/NSC WASHDC

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DEPT FOR SA/RA, DDTC, ISN, AND PM - ERUSSEL AND MMARKOFF,
DOC FOR BIS AND ITA, DOE FOR NNSA

E.O. 12958: N/A
TAGS: [PREL](#) [ETRD](#) [ETTC](#) [KNNP](#) [KSTC](#) [PARM](#) [TSPA](#) [MTCRE](#) [IN](#)
SUBJECT: GOI UPDATES ON EXPORT CONTROLS DURING HTCG

REF: A. NEW DELHI 5444
[1](#)B. STATE 112244
[1](#)C. NEW DELHI 6848

[1](#)1. (SBU) Summary: MEA officials used the Strategic Trade session of the High Technology Cooperation Group meetings held in New Delhi December 1 to respond to USG questions about India's export controls, stating that the Indian regime "completely covers" MTCR and NSG requirements. The GOI presenters gave an overview of steps the GOI has taken and continues to take to implement the May 2005 WMD Bill in letter and spirit, and to educate the Indian export community on the new legal requirements. USG and GOI participants noted the need for greater GOI and industry understanding of the current control requirements for US exports to India and agreed to increase collaboration in outreach to government and industry groups. The Indians signaled clearly that harmonization with Waassenar and the Australia Group are off the table for now, and that formal public adherence to the NSG and MTCR will have to move in tandem with steps by those regimes to accommodate India as a partner and not as a target. USG representatives responded that increased GOI transparency on regime adherence would facilitate US efforts on civil nuclear cooperation in Congress and the NSG. End Summary.

WMD Export Controls

[1](#)2. (SBU) Responding to lingering USG questions on details of India's new WMD Bill (Ref B), MEA Joint Secretary (Disarmament and International Security) Hamid Ali Rao told

the USG participants led by DOC/BIS DAS for Export Administration Matt Borman that the revised SCOMET (Special Chemicals, Organisms, Materials, Equipment and Technologies) List published following the passage of the Bill "completely covers" all the items on the MTCR and NSG control lists. Rao outlined GOI efforts to implement the May 2005 WMD Bill, including Directorate General of Foreign Trade (DGFT)-led regional and sectoral outreach sessions to explain the revised export controls to the Indian export community; and government checks including end-use verification, controls on re-exports, documentation, "visible" authority to intercept shipments, and "non-visible" screening of end-users. The MEA now leads an interagency group charged with examining transactions and export license requests, and a Core Group has been created to train ports and customs inspectors on the new guidelines, he added. Rao noted that a separate group is using intelligence inputs to target suspect transactions. He also stated that the GOI looks forward to hosting an exchange of customs officials in early 2006, and would appreciate suggestions for dates from the USG.

13. (SBU) State/ISN officer Schultz noted that there were a number of MTCR-controlled items that we had not been able to identify on India's SCOMET list. Handing over a list of 84 items, Schultz requested that the GOI review this list and provide clarification to the US so that we might reach a common understanding of the correlation of India's SCOMET listing and that of the MTCR. DOE officer Welihozkiy similarly noted that a few questions remained in terms of harmonization of the control lists and guidelines with the NSG, and offered to provide later a nonpaper outlining those

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issues. MEA Deputy Secretary (DISA) Naveen Srivastava reassured that harmonization with NSG and MTCR had been achieved, and that these perceived differences may be a matter of interpretation of some of the technical terms. In an offline discussion, ISRO Assistant Secretary Rajeev Lochan volunteered to Schultz that SCOMET phrasing was very carefully chosen, and frequently was done to be more encompassing than that of the NSG and MTCR.

14. (SBU) Rao and J/S (Americas) S Jaishankar cautioned that discussion of Indian harmonization with Waassenar and Australia Group guidelines would be "premature" at this stage, adding that this issue had been discussed at higher levels of our governments. USG representatives, noting that Waassenar and Australia Group harmonization would facilitate trade, urged the GOI to hold open this option. State/ISN Schultz separately noted with Jaishankar the benefits that harmonization would have in preventing onward proliferation. Regarding adherence to the NSG and MTCR, Rao responded that while New Delhi is "committed to working towards adhering" to the regimes, it does not intend to submit formal statements of adherence until the regimes "adjust to India." Recalling the GOI's objections to language referring to nuclear weapons states and non-nuclear weapons states in the new protocols to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) (Ref C), Rao explained that because the NSG "targets India," New Delhi would defer any formal notification to the NSG chair until the NSG members altered their policies toward India. Nevertheless, he emphasized, as a matter of fact India has harmonized its control lists with both the NSG and MTCR guidelines through the new Bill and its attendant lists and guidelines. Written adherence, he argued, was a "formality."

US Delegation members noted that adherence would be a demonstration of India's non-proliferation commitment, particularly to those whose cooperation would be essential to fulfilling the goals of the July 18 agreement on civil nuclear cooperation. Pressed by PolCouns on the question of NSG adherence, J/S Jaishankar declared that "we are where we are ... pending the formal step of sending a piece of paper."

Implementation of Regime Adherence: Harmonization of Control Lists and Guidelines

15. (SBU) MEA's Naveen Srivastava explained that while the WMD Bill used the language "missiles designed" for delivery of WMD, the GOI SCOMET list and implementation guidelines (available on the DGFT web site at dgftcom.nic.in, under "SCOMET," "What's New") issued in July 2005 specifically control end uses in which there exists a possibility of diversion, or use in a "system capable of delivery" of WMD. This is the first time India has made public its implementation guidelines. Srivastava noted that the SCOMET list controls all missiles, regardless of range or payload. He pointed out that all entities in India dealing with missiles are government-controlled, and therefore India's control over exports is even tighter than the MTCR guidelines would suggest. The WMD Bill also covers systems such as microlights and hang gliders that could be used for terrorism purposes, but are not captured by the MTCR.

16. (SBU) Regarding the use of the words "safeguards as

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appropriate" in the SCOMET and guidelines, Rao clarified that the GOI interprets this in the same manner as the NSG language "full-scope safeguards." The difference in language simply reflects the fact that India is not a party to the NPT, he explained. Similarly, the GOI believes that other variations in language are "not technically relevant." However, Srivastava agreed to review and respond to the list of USG questions regarding variances of language between SCOMET and the MTCR guidelines. Responding to a USG question on whether the SCOMET includes EDP (especially designed or prepared) language, Srivastava pointed to SCOMET item 0B001, which states "especially designed, prepared for, or adapted," the same language as the NSG guidelines.

Catch-all, Industry Outreach, and Licensing Volume

17. (SBU) Srivastava further explained that the GOI has an internal watch list of end-users that it uses to implement catch-all provisions of the WMD bill. The GOI is "fully conscious" of the need for outreach to industry and has conducted outreach activities to educate suppliers of the need to investigate potential end-users before exporting. These have been targeted, for instance, at manufacturers of glass-lined furnaces who are based in Gujarat. DGFT has drawn up an outreach plan that targets both economic sectors and regions and will work with such industry organizations as the Confederation of Indian Industry (CII), the Federation of Indian Chambers of Commerce and Industry (FICCI), and the Indian Chemical Manufacturers Association to implement it. Asked about the number of licenses issued, Rao reported a range of 100-120 each year, mainly for "process equipment" like glass-lined reactors and graphite-based heat exchangers.

EXBS Program

18. (U) In response to SA/RA Director Schlosser's point that the EXBS program is a resource that can be drawn on to enhance the GOI's enforcement and industry outreach efforts, Rao stated that India is prepared to reschedule two EXBS exchanges, on customs enforcement and commodity classification, in early 2006.

Issues to Facilitate Trade

19. (U) The delegations exchanged suggestions for facilitating trade, and agreed on a list of action items to direct future efforts. Jaishankar requested that the USG review the 1984 Memorandum of Understanding on high tech trade import certificate requirements, and determine whether exports to India should continue to require a license for

regional stability reasons or supporting documentation for government end-users. DAS Borman noted that a regulation would be published in the coming days eliminating import certification for national security requirements for GOI end users. Jaishankar also suggested more frequent provision of CCL licensing data related to end-use visits, so that the GOI could share "testimonials" of good experiences with potential end-users in India. Many of the problems in high tech trade, he added, are due to misperceptions among potential buyers of

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the difficulties involved in purchasing from the United States. Finally, Jaishankar requested that the USG speed up the removal of GOI entities from the Entities List, arguing that it would be difficult to convince the Indian space community of the value of increased cooperation with the US if Indian Space Research Organization subsidiaries remain on the Entities List.

¶10. (U) The participants also discussed the value of starting discussions of licensing early in a project's development, so that the American and Indian partners could prepare. However, Directorate of Defense Trade Controls Policy Director Ann Ganzer pointed out that talks must include the US vendor, as ultimately it is the vendor's decision on how to apply for a license. Borman and Ganzer agreed to provide a simplified summary of licensing options for use in helping Indian customers understand licensing requirements when planning procurements from the US.

Cybersecurity: Waiting for Answers

¶11. (U) National Security Council Secretariat Joint Secretary Arvind Gupta pointed out that the GOI is still

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awaiting answers from the US on proposals made at the last cybersecurity working group for a Joint Fund and Joint Research and Development Center. He also reiterated India's desire for technical exchanges of experts in cybersecurity, to include new areas such as transportation and financial services.

Action Items

¶12. (U) Wrapping up the meeting, Jaishankar and Borman agreed to the following plan of action for progress:

-- For Both Governments

¶A. Review the 1984 Memorandum of Understanding to determine whether it should be abrogated.

¶B. Discuss joint outreach to other GOI agencies to explain current US licensing requirements and policy.

-- For the USG

¶A. Notify the GOI that the regulation eliminating import certification for national security requirements for GOI end users has been published.

¶B. Review whether India can be removed from the list of countries for which supporting documents are required for government-owned purchasers under EAR Section 748.9(2).

¶C. Determine whether the Department of Commerce can provide licensing data more frequently to the GOI.

¶D. Consider the GOI's request to remove Indian entities from the Entities List as new information arises.

¶E. Provide a non-paper giving a simplified overview of the licensing options for Indian users.

¶F. Give to the GOI the USG comparison of the revised SCOMET lists to the NSG and MTCR lists and guidelines. (Note: MTCR paper was provided during the meeting. End Note)

¶G. Consider providing to the GOI data on CCL license applications that have been returned without action (RWA).

-- For the GOI

¶A. Review the USG analysis of the SCOMET lists and respond to perceived variances from the NSG and MTCR lists.

¶13. (U) Meeting Participants:

GOI

MEA J/S (Americas) S Jaishankar
MEA J/S (Disarmament and International Security) Hamid Ali Rao
Indian Embassy Washington DCM Raminder Jassal
MEA Director (Americas) Gaitri Kumar
ISRO Asst. Scientific Secretary Rajeev Lochan
ISRO Dept. of Space Jacob Ninan
Dept. Atomic Energy Head (ISD) K Raghuraman
National Security Council Secretariat J/S Arvind Gupta
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USG

DOC/BIS DAS Matt Borman
DOC/BIS Special Assistant Mark Webber
SA/RA Director John Schlosser
DOS/DTCP Director Ann Ganzer
DOS/ISN Kathryn Schultz
DOE/NNSA Anatoli Welihozkiy
PolCouns Geoff Pyatt
EconCouns Lee Brudvig
Poloff Jai Nair, notetaker

¶14. (U) Visit New Delhi's Classified Website:
(<http://www.state.sgov.gov/p/sa/newdelhi/>)
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